A Bill to amend the Cochin Abkari Regulation.

Mr. K. Achyuta Menon.—Sir, I beg to move that the "Bill to amend the Cochin Abkari Regulation I of 1077" be read in Council.

Mr. T. K. Krishna Menon.—I beg to second it.

Mr. K. Achyuta Menon.—The amendments proposed are to clauses (l), (m), (n) and (o). The amendment proposed is with regard to the search of houses, which could not now be done by aminadars without a warrant. The power is vested under the Regulation primarily in the Magistrate to issue search warrants on the application of the officers concerned; but it is thought that, in order that illicit manufacture of liquor may be detected easily, it is necessary to invest aminadars also with such powers taken from the Excise Superintendent. It will take some time before the Magistrate is moved in the matter and search warrants obtained. The amendment is that the aminadars whose status has been considerably improved should be invested with these powers. In the Travancore Regulation also this power has been conferred on Abkari officers who draw a pay of not less than Rs. 20. Our aminadars' pay is Rs. 15 to 40. Here the lowest is Rs. 15, but there it is Rs. 20. Further, our Regulation was first enacted in 1077 when the post of Sub-Inspectors was not created. The power was vested under the Regulation in Station-house Officers also to search houses even without a warrant. I do not think that the status of the present aminadar is in any way less than the status of the Police Station Officer. Their pay was also Rs. 15 or so. In British India also Police Station Officers are invested with these powers. The amendment proposed is nothing extraordinary.

Mr. A. B. Salem.—May we know the present difficulty experienced with reference to the administration of the department, that is, with reference to the searches that is now being experienced because of the absence of power to search to the aminadars?

Mr. K. Achyuta Menon.—The aminadars used to search and take possession of liquor when it is found in the premises and verandahs of houses. There was a case like that, and when it came to the Chief Court, it held that the aminadars could not search the verandah, because it formed part of the house. As a matter of fact, it is being done ordinarily. If an aminadar gets scent of illicit manufacture of liquor, and in order to take possession of that, he has to get a warrant from the Magistrate; before he goes to the Magistrate and gets the same from him, it will be very easy for the persons concerned to remove all traces of such an offence.

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President.—Obtaining search warrants from the Magistrate would mean giving publicity of the offence, and this leads to the search being ineffective.

Mr. K. Achyuta Menon.—If an aminadar gets scent of the manufacture of illicit liquor, under the present Regulation he has no power to search the house without a warrant from the Magistrate. Experience shows that Regulation I of 1077 is not enough to maintain law and order in the Abkari Department, and it requires amendment.

President.—Is it not clear, Mr. Salem? The delay is dangerous in the present case.

Mr. A. B. Salem.—If they would expand upon that, we would be able to know something.

President.—If the aminadars are not invested with these powers, no illicit case can be brought to book. Getting a search warrant from the Magistrate will mean giving publicity to the offence, and the person could remove all traces of the commission of the offence, before the officer goes there with the warrant.

Dr. A. G. Menon.—Let us be informed what the Special Finance Committee's proposals are about this. If there are radical changes in the department, then, there may be no necessity for this law now.

President.—They will be concerned with the pay of the aminadars only, probably.

Dr. A. G. Menon.—They may be going to change the status of the aminadars and give them another name as Sub-Inspector or some other name, and then, they will be empowered under the old Regulation itself to search houses. Then, there is no necessity for pushing this Bill so rapidly through the Council.

Mr. K. Raman Menon.—Is it not dangerous for the peace of our poor people by placing powers in the hands of the aminadars?

President.—Placing these powers in the hands of the aminadars is not, I think, in any way dangerous. Police Station Officers and Police Officers are empowered to search houses. Is there not power given to them to do so? These are all inevitable, Mr. Raman Menon. It is only by efficient supervision that they are not allowed to exceed their powers.

Is it on a point of information you ask? It is open to you to speak on this motion.

Mr. K. S. Rama Ayyar.—Sir, this is the most perverse piece of legislation I have ever come across. I repeat it, and ask you to consider whether perversity can go any further. Even martial laws enforced during troublous times show more consideration for the safety of person and property. Let us see what

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the Superintendent of Excise Revenue wants. By section 31 of the existing Regulation (Regulation I of 1077) the Superintendent is empowered to enter and search any place without a search warrant. This power of search is vested also in Abkari and Police Inspectors and Police Sub-Inspectors in emergent cases. But very rightly, the power of issuing search warrants is vested only in the Magistrates. What the Superintendent now asks for is that, in addition to his powers as an executive officer, he must possess the power of issuing search warrants also. And to justify this request, he says that the delay and publicity involved in obtaining a search warrant from a Magistrate leads to searches being unsuccessful. The Superintendent of Excise Revenue is a big officer of the State, entrusted with the control and administration of a department of the Government, which brings in a revenue of more than 12 lakhs of rupees, and it may at the first sight appear that there is no harm in conceding this power, as he asks for it only for the prompt and proper discharge of his functions. But when one considers the principles on which powers are distributed, one will easily find that concession of this kind of power to such an executive officer is highly objectionable, as it may sometimes prove dangerous to the interests of the subjects of the State and detrimental to the carriage of justice in the country. Sir, in this twentieth century, there are few people who do not know the impropriety of combining executive and judicial functions in one and the same officer, and it is too well-known that one cause that the National Congress has been fighting for is the separation of the executive from the judiciary. It is this acknowledged high principle that induced the Government of the State some years ago to divest the Peishkars and Tahsildars of their long-cherished magisterial powers. This little State of Cochin, Sir, is far ahead of British India and Travancore in this all-important matter, and the people of the State have been priding themselves over this advancement among other things. Pity it is that after so much advancement this Bill has come up, which sets the hands of the clock back. Would anybody set his mind to this sort of work? Can anybody agree to such legislation now? No. On the highest of principles and in the interests of justice, the Council can only say 'no.'

Under section 30 of the existing Regulation, all the Magistrates of the State are empowered to issue search warrants. The word is 'any magistrate,' and there is a good number of them. In these circumstances, it is difficult to comprehend the necessity that has arisen for this impolitic change. I impress upon the Government that the unprejudiced preliminary enquiry

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expressly provided for in section 30 before the issue of a search warrant by the Magistrates cannot always be made by the executive head of the department, and as this is a safeguard against hasty actions based on impulses, the power should rest in the hands of the Magistrates and in their hands alone.

But this is not the worst part of the Bill. The Superintendent also recommends to the Government his aminadars should be empowered to search houses without warrants. Besides the Magistrates, first he wants to add one more officer to issue search warrants, and wants the power for himself, on the ground that it is only he that can issue warrants promptly and in secrecy. And in the same breath he asks that his aminadars should be empowered to make house searches *without* warrants. There are now 34 of the aminadars, and they have nearly 200 peons under them. These aminadars are men whose pay ranges from Rs. 35 to Rs. 15 a month. The lowest pay is Rs. 15, and the greatest number is on this lowest pay. On account of the low pay offered, educated men have never been attracted to these posts, and the personnel of this branch of the service is extremely unsuited even for the responsibilities that they are now discharging. There are some quite undesirable people among them—I don't say it is their fault—and even with the little power that they now have, the amount of trouble they create, and the havoc they commit is great. The people of the State are quiet and law-abiding, and they live in fear of even the lowest officers, and they have neither the tendency nor the strength to create disturbances or commit outrages. If you invest these uneducated, unprincipled and ill-paid subordinates with such extraordinary and dangerous powers they are sure to abuse them, and I fear the person and property of every man in the State will be rendered unsafe and, more than all this, the honour of the women of the poorer classes. This search, it must be noted, is permitted to be made even by the existing Regulation by day or by night. And after all, it is a search for illicit liquor. It will be a reign of tyranny. It will be like—pardon me for using a strong expression—it will be like letting loose 200 wolves on the poor people of the State. I don't want to say more. We believe the Government is composed of sane men, and we hope that this catastrophe will not be brought about. 'Safety and welfare of the subjects first, and everything else after that' must be the rule.

Amendments 4, 5 and 6—all mean the same thing. It is a craving for more power for himself and his subordinates. But in the anxiety to acquire these powers, not a moment's thought

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has been spent on the principles of Government or on the safety of the person and property of the subjects, and we cannot, therefore, grant it.

Mr. A. B. Salem.—I rise to oppose and to state that our party is also opposed to it. We feel that this power of search can never be vested in the Excise Department. After a great deal of agitation, in the time of Mr. Banerji we succeeded in separating the judicial and executive functions of this State.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—There was no agitation, and the separation was no result of agitation.

Mr. A. B. Salem.—Say it was made as a result of co-agitation then. Whatever it is, the matter was well being agitated in the press at the time everywhere, that the judicial and executive functions should be separated, and that it is detrimental to the peace of the State or any State outside in India. If it was done without anyone having pressed for it, then give the credit to Mr. Banerji for having brought about that reformation in Cochin. It is still our pride that we have advanced far ahead of British India, and as our Member for Trippunittura has stated the judicial and executive functions have been standing separated here.

President.—I think there also the Tahsildars have no magisterial powers.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—There the Tahsildars have magisterial powers. They do not exercise them. There, the power is potential.

Mr. A. B. Salem.—Our Peishkar and Tahsildars have been carrying on their revenue collection without magisterial powers, and we have been satisfied with the persuasive element in the administration. The Excise Superintendents also have been carrying on this department without this power all these years. I do not see why the present Excise Superintendent must cry for Tavancore methods now for issuing warrants for the purpose of searching for illicit manufacture of liquor, etc. What they are asking for now is that they should be given powers to open the doors of people at mid-night to search for illicit liquor. Government is openly selling liquor. Government is maintaining a distillery to feed the population with their liquor and increase their liquor appetite. Government is doing that which they say other people should not do. That is the system under which we are now living. I should have stated that, when the Government tell the people not to do a certain thing and not to manufacture drink, they should set an example by not continuing their own manufacture of liquor, which they are now doing. And they tell you, you must not manufacture liquor,

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That is the position in Cochin ; it is the same in India. That which you tell others not to do, you ought not to do yourself. Then, under these circumstances when we are crying for as little power to be given to the executive, we are finding an encroachment of the subjects' rights being brought in to be passed here. We are to be searched by the Police, by the Magistrate, by Police Inspectors, by Sub-Inspectors, by the Station House Officers, and now you want to allow the low-paid aminadars also come in to search. I asked a question of the Hon'ble Law Member to enlighten us upon the necessity of this legislation, and I do not get any enlightenment in reply. I get a case, taken before the Chief Court, of an aminadar searching the verandah of a house, and the Chief Court has said that it was not right. What is the inference to be drawn from that statement? Even now, when they have got no powers, they encroach upon the rights of the people. They get into the houses and abuse their present powers. Who knows how many such cases occur and do not come to public view? I think, Sir, that it will be detrimental to the public interests to invest these officers with these powers, and we must stoutly oppose the placing of any judicial power in the hands of the Superintendent or the aminadars or of any officer of the Department. Judicial functions should be separate from the executive functions. What is stated here is that there will be liquor in a room, and by the time an Excise Officer goes to the Magistrate for a search warrant, the liquor will go off. How did he know that there will be liquor there? If he has got some information, let him go to the Magistrate first. Why should he look into the house and ascertain whether there is liquor there before he goes to the Magistrate and take the warrant and come into the house for making a search? Now, what is it he wants? Why do they want to enter our houses?

Mr. V. B. Vaidyanatha Ayyar.—That is not the law.

Mr. A. B. Salem.—What is the law? We do not want these powers to be given to aminadars and Excise peons. They are themselves to be abolished in the near future. We do not want to give them power and abolish them. Further our leader's question as to what the proposals of the Special Finance Committee are on the matter has not been answered. In the face of the proposals of the Finance Committee, I do not know whether this Bill itself will be necessary. I oppose the Bill.

Mr. A. Sankara Puduval.—I rise to oppose this Bill which is in its nature quite retrograde. Sub-divisions 4, 5 and 6 of section 30 of the Excise Regulation, I believe, would enable Hon'ble

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members to a considerable extent, to determine, if there is any necessity for this innovation. Section 30 of the Abkari Regulation runs thus: "If any Magistrate, upon information obtained and after such enquiry as he thinks necessary, has reason to believe that an offence under section 55 or section 57 or section 58 of this Regulation has been committed, he may issue a warrant for the search for any liquor, intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed." The power is safeguarded by this wholesome proviso. "Before issuing such warrant, the Magistrate shall examine the informant on oath or affirmation, and the examination shall be reduced into writing in a summary manner and be signed by the informant and also by the Magistrate." Section 31 distinctly empowers the Superintendent of Abkari Revenue to search and detain contraband stuff. It says "Whenever the Superintendent of Abkari Revenue, or any Abkari or Police Officer not below the rank of Inspector or a Police Station Officer has reason to believe that an offence under section 55 or section 57 or section 58 of this Regulation has been committed, and that the delay occasioned by obtaining a search warrant under the preceding section will prevent the execution thereof, he may, after recording his reason and the grounds of his belief, at any time by day or night, enter and search any place, and may seize anything found therin which he has reason to believe to be liable to confiscation under this Regulation, and may detain and search, and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Regulation:" Now the idea is that these powers should be entrusted to aminadars. Again, it is found in section 32 : "The Superintendent of Abkari Revenue, or any Abkari Officer not below the rank of Inspector, or any Police Officer duly empowered in that behalf, may enter and inspect, at any time by day or by night " and so on. The amendment proposed to this section is " for the word 'Inspector' substitute 'aminadar'. " The existing provisions are amply sufficient. Once upon a time the Diwan was exercising judicial functions in excise cases. In the interests of the public, these judicial functions were taken away from him. It seems to me singularly ridiculous that the Superintendent of Abkari Revenue should have judicial power, when the same was taken away from the Diwan and handed over to the District Magistrate. We find that the amendment proposed to section 30 is, after the word "Magistrate" wherever it occurs add 'or Superintendent.' That, I venture to submit to the House, is an absolutely unwarranted demand of the exercise of judicial functions, and the Superinten-

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dent of Abkari Revenue, the executive head of that Department should certainly not be invested with the same. Moreover, there is absolutely no justifying necessity to empower aminadars to conduct search in houses, according to their sweet will and pleasure. There is no reason brought forward by the Hon'ble Member in charge of the Bill why this power should be extended to aminadars as well (*Laughter*). He instances the case of Travancore. It is unnecessary to ascertain the practice in Travancore. This Bill is also inopportune for two more reasons. Rightly or wrongly, the work of the subordinate officers of the Excise Department has given rise to much criticism and very great suspicion. Secondly, it is very unfortunate that this Bill should be brought in now when the matter is engaging the attention of the Special Finance Committee. And before the Finance Committee has sent up its report, I do not know why Government should have rushed in with this Bill. On grounds of public interest also, I oppose the introduction of this Bill.

Mr. C. A. Ouseph.—I shall concede for a moment, though facts are otherwise, that the petty officers of the Abkari Department are paragons of virtue, and let us take the reasons given by the Government for the introduction of this Bill to be in its favour. Sir, there are two departments in the State, Police and Abkari, who, under certain circumstances, have the power of entering into the houses of persons. As it is stated in England and elsewhere, a man's word is law in his house, and he has a right and liberty to push out any man who enters his house without his consent. The house is sacred. No man shall enter it unless it be for urgent humanitarian and immediate purposes. And now, Sir, between the work of the Abkari Department and the Police Department there is a lot of difference. What is the intention of having the Police Department? It exists for safeguarding the life, liberty and security of every section of the subjects. What for does the Abkari Department exist? It lives to make money for the department. The amendment proposed is for making more money by detecting illicit manufacture of liquor. So there is a vast difference between the two departments; one is for humanitarian purposes and the other for amassing money, and that difference should be kept up, and that difference should be the guiding principle in determining the fate of this Bill. There is absolutely no justification for giving power to enter the houses of any man or woman to any officers other than the officers of the Abkari Department. For these reasons I oppose the Bill.

Mr. V. B. Vaidyanatha Ayyar.—It is said by the Member for Trippunittura that the proposal to invest the Excise

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Superintendent with the power of issuing search warrants is perverse. Now, this provision has been taken from the British Act, I mean the Madras Abkari Act. There if any Abkari officer goes to the Collector and gives information of the manufacture of illicit liquor, etc., the latter could issue search warrants. There, though Collectors are also Magistrates, still Collectors as such have been empowered to issue search warrants. Well, I do not know whether the Member would characterise the system in force in the Madras Presidency as perverse. In my opinion, the investiture of the Excise Superintendent with the simple power of issuing warrants is not such a conferring of judicial powers as would infringe the principle of not conferring judicial and executive powers on the same individual.

Mr. C. A. Kunjunni Raja.—Is the Collector the same as the Excise Superintendent?

Mr. V. B. Vaidyanatha Ayyar.—All powers of the Collector of a District in the Madras Presidency are exercised here by the Excise Superintendent.

Dr. A. R. Menon.—All powers of the Collectors?

Mr. V. B. Vaidyanatha Ayyar.—All the powers of the Collectors, so far as Excise matters are concerned.

Mr. C. A. Ouseph.—As far as District Magistrates in the Madras Presidency are concerned, they have powers of the Excise Superintendent, and the Collectors have the powers of District Magistrates.

Mr. V. B. Vaidyanatha Ayyar.—We are not on that point here. The fact is that the provision in the Madras Act itself was enacted only in 1913. The reason why we want that provision here is that it is not so easy to have access to the Magistrates as stated by the Member for the Jewish constituency. He seems to think that there are Magistrates throughout the nook and corner of the State and that Excise crimes are committed where Magistrates reside. This is not so, for Excise crimes are committed far away from the places where the Magistrates reside. Further, our Magistrates are not itinerary Magistrates; they are confined to the head-quarters.

Mr. A. B. Salem.—I do not think that is correct.

President.—They have to go out officially.

Mr. V. B. Vaidyanatha Ayyar.—They are not generally circuiting officers.

Dr. A. G. Menon.—They can go to the Magistrate where he is and get the warrant, for generally the Magistrate will be at the head-quarters. If he is on circuit, then there may be more difficulty to get the search warrant issued.

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Mr. V. B. Vaidyanatha Ayyar.—It is said by the same Member that information regarding malpractices, such as manufacture of illicit liquor, is obtained by the Excise Officers before they go to the place, and so they can get the warrant from the Magistrate and then only they need go to the place. But this is not always the case. Under the rules, if information is obtained by them before they go to the place, and if there is a Magistrate at the place where the information was received, certainly they are bound to obtain a warrant from the Magistrate. But in several cases information is obtained by them when they patrol on duty, and then, if they cannot at once enter the places without warrant but could do so only after going to a Magistrate and obtaining a warrant, no useful purpose will be served, for, by the time they return with the warrant, which will be in many cases after covering a distance of 10 or 16 miles, all traces of crimes would have disappeared. So any delay would be a great obstacle to successful detection, and further, it is not so easy to get at the Magistrate to enable them to search houses. That is why the present Bill has been moulded on the lines of the British Act. Then, with regard to the investiture of the aminadars with the power to search houses without warrant. In the first place, I may say that the aminadars here, though they are not called Sub-Inspectors, have to discharge the same duties as Sub-Inspectors in the Madras Presidency. The only difference in their powers is that the aminadars here have no power to search houses without warrant, whereas the Sub-Inspectors in the Madras Presidency have got such powers. Even now it is open to any aminadar to search any house in which illicit liquor is manufactured, provided they have armed themselves with a search warrant. If their object is to cause annoyance to the public, they can do it even now. They will say that they have got information, and that the information is credible, and, therefore, there is sufficient provision in the law to enable them to obtain a search warrant. Therefore, what I say is that there is ample power in the aminadars even now to search houses, if only they have armed themselves with a warrant. Even if they are given the power now asked for, still they cannot go to search houses without a warrant. They can do so only if there is no time to get access to the Magistrate for getting a warrant.

President.—In all cases they cannot search the houses simply because they can search without a warrant. They must prove that they had not sufficient time to go to the Magistrate and get a warrant. Are there cases where they can go without a warrant?

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Mr. V. B. Vaidyanatha Ayyar.—They can search without a warrant only in cases where they cannot have access to the Magistrate to get a search warrant.

President.—This is only in exceptional cases, i. e., where there is not sufficient time to apply to the Magistrate and get a search warrant.

Mr. V. B. Vaidyanatha Ayyar.—The provision relating to searches without warrant is contained in clause 31, and is as follows:—

"Whenever the Superintendent of Abkari Revenue, or any Abkari or Police Officer below the rank of an Inspector or a Police Station Officer, has reason to believe that an offence under section 55 or section 56 or section 58 of this Regulation has been committed, and that the delay occasioned by obtaining a search warrant under the preceding section will prevent the execution thereof, he may, after recording his reasons and the grounds of his belief, at any time by day or night, enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Regulation, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Regulation".

President.—The Judge should decide whether there was time to apply to the Magistrate or whether the aminadar was mischievously inclined. That is the test.

Mr. V. B. Vaidyanatha Ayyar.—Further, there are sufficient safeguards provided by the Law in the matter of searches, for they should be conducted in the presence of two respectable witnesses of the locality. So the mere fact that the aminadars here are not called Sub-Inspectors cannot be a ground for not investing them with such powers. No doubt their pay has not been as it ought to be. But it is not their fault. And the reason why they were not invested with this power is that, when our Abkari Regulation was passed, their pay was only Rs. 10 to 16, and it was considered then that their pay was too low for their being invested with such powers. In 1096 their pay was increased, the present pay being Rs. 40 and 50. It is said that we need not go to Travancore, but I say that, we have to see what other Governments are doing. There, Petty Officers, not even in charge of the ranges, are given such powers. In Travancore Petty Officers drawing not less than Rs. 20 have also been invested with the power to search houses without warrant.

Dr. A. G. Menon.—Petty Officers in British Malabar?

Mr. V. B. Vaidyanatha Ayyar.—No, in Travancore.

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President.—You have been examined by the Special Finance Committee, and was no question addressed to you on this point?

Mr. V. B. Vaidyanatha Ayyar.—No, Sir.

Mr. N. Padmanabha Menon.—How many cases of unsuccessful searches were there during last year, or say during the last three years? I want only the approximate number. I believe that would be one of the reasons for recommending this Bill by the Law Member.

Mr. V. B. Vaidyanatha Ayyar.—I can't say. I don't remember.

Mr. N. Padmanabha Menon.—The very fact that he is not able to give a definite answer prompts us to think that such a thing has never taken place.

Mr. V. B. Vaidyanatha Ayyar.—That is not the reason. The reason why this Bill has been proposed is what is stated by the Hon'ble the Law Member, viz., the difficulty of detecting malpractices without this power.

Mr. N. Padmanabha Menon.—"It has now been brought to the notice of the Government by the Superintendent of Excise Revenue that the delay and publicity involved in obtaining a search warrant from the Magistrate leads to the search being unsuccessful." I want to know whether this statement is supported, by facts and whether there are numerous instances. Any one solid instance?

President.—What he wants to know is in how many cases of such illicit practices, the aminadar, having known them, applied to the Magistrate and got the warrant, and before the warrant was executed, everything was removed, and it was difficult to get any trace. He wants to know whether there are such cases.

Mr. V. B. Vaidyanatha Ayyar.—I know of cases where the aminadars were not able to detect cases, because, by the time they were able to arm themselves with a warrant, the traces of the crime had disappeared.

Mr. A. B. Salem.—May we know where it disappeared?

President.—It is only on suspicion—i. e., when he has got reasonable ground for suspicion—that illicit manufacture is going on in a particular place that he makes up his mind and tries to get a warrant. By the time he is armed with a search warrant all traces of illicit practice are removed. He cannot enter the house to satisfy himself, without a search warrant.

Mr. N. Padmanabha Menon.—Are we to understand that the Government is not able to give the approximate number of

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cases? Can you point out a specific case where malpractices were brought to your notice, and where the aminadar, after being convinced that malpractice was going on, and after arming himself with a search warrant, found, on going to the place, that there was nothing?

Mr. V. B. Vaidyanatha Ayyar.—He goes to the spot, understands that something is going on, and he returns for a search warrant. No officer would go to the length of travelling 8 or 10 miles with the expectation that till he comes back the malpractice would be continued there. Moreover, while the aminadar may get information that illicit practice is going on, the owners of the house also will know the movements of the aminadar, and they will be prepared.

President.—It is not necessary that the owner should get the information, so that, after getting the information, the aminadar may go to the Magistrate, get the necessary search warrant and take him by surprise.

Mr. V. B. Vaidyanatha Ayyar.—In all cases where the Excise Officers get information beforehand, they do not go without arming themselves with a search warrant.

President.—Do you find that all the traces have been removed?

Mr. V. B. Vaidyanatha Ayyar.—In a few cases, Sir.

Mr. N. Padmanabha Menon.—Are we to understand that this is only imaginary? It is seen from the answer by the Hon'ble Member in charge of the Department that there are no actually reported cases. So that harm must be more or less imaginary.

President.—I do not know whether he has looked into the records in such a way as to make a definite statement on the point.

Mr. N. Padmanabha Menon.—Are we to understand that this has been introduced without going through the records? There must have been a few cases at least.

Mr. M. Krishna Menon.—The Magistrate will be at the head-quarters on all days, while the Superintendent of Excise will be touring, and it is more difficult to get a warrant from the Superintendent than from the Magistrate. The only possibility is to fill up forms and sign them before-hand. From practical experience, this House will understand that the Magistrate will be within the jurisdiction, whereas the Superintendent will be touring throughout the whole of the Cochin State. If the Superintendent is at Chittur, and if a warrant is to be obtained in Ernakulam, one has to go to Chittur, which is still more difficult. If the Abkari Executive Department is authorised with

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the business, they can keep papers signed beforehand, and it is to avoid this that judicial officers alone are authorised, and it will be rather hard, if we give the power to the executive also.

Dr. A. R. Menon.— I wish to say a few words from the point of view of a layman. First of all, I do not wish to pass any opinion in favour of it. But what appears to be the case, so far as a layman is concerned, is that the Superintendent of the Abkari Department claims power to issue a certificate or warrant to any of his subordinate officers, even to petty aminadars—I do not say a word against them to wound their feelings to enter into anybody's house at any time they like, and inspect the premises to find out whether there is any illicit liquor there or whether any illicit liquor is manufactured in the house. The only two people who can be given these powers are the Police and the Abkari Offices. We are anxious that no obstacle should be thrown in the way of the Police in the carrying out of their duties because their duty is of a very grave and serious nature involving, sometimes, loss of life, property and honour to our people, and so nobody should offer any obstacle in the way of the Police. But when you come to this wretched Abkari Department, the sole object of its existence is to get some revenue from our people by giving them some drink. It is very difficult to conceive that power should be vested in the hands of an officer empowering him to enter into the house of these people who will never have even touched the liquor. If this activity is extended to distilleries, only then there is some justification. The Commissioner of Police, if he thinks it necessary, or if he is satisfied that a case has been made out, may issue a warrant to enter into anybody's house for searching. The position is untenable, and we are bound to oppose them. The second point is that the position of the Excise Superintendent here is equal to the Collector of the British Government. To put it more mildly and very gently, without wounding his feelings, I can only say that he has showed an amount of ignorance which ought not to have come from the Head of a Department. The position of the Collector is more or less corresponding to the Diwan of the Cochin State. The Diwan has an inherent power to override any department, to set aside the decision of any of the Heads of Deparments and in a way he is responsible for the good administration of the State, while the subordinates are only to help him. Similarly, the Collector of a District is the Governor of the District, and he is responsible for the proper administration of justice and the collection of revenue and of all analogous duties that go to make up the government, and he is the Head of the Department. To come up

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and say that the position of the Excise Department is equal to that of a Collector is, on the very face of it, an absurd proposition. The third point is this. Here he is called aminadar, whereas he is called a Sub-Inspector in British territory, and in British territory he is empowered to do certain duties which the aminadar is not allowed to do here. If you make the alteration in this duty, the position of the aminadar will be equal to that of the Sub-Inspector in British India. The argument is untenable on the face of it. The mere fact that a Sub-Inspector is entrusted with this power to deal with these matters indicates that he is a man of status and position. These higher and upper subordinate officers have become a kind of nuisance to our people—all members of the Cochin State not only in the Cochin State, but in Travancore and British India. The nature of the Department is such that it deals with liquor and drunkards. Therefore, to such a department handing over an additional power is really injurious to public interest and calculated to produce more harm than be a good remedy. Because we are not able to detect a certain case, does Cochin State cease to exist? Are we all going to die, because the Excise Superintendent was only able to detect a few cases of Abkari? Certainly not. Let them rather escape than we should be found on penalising them, when even the officers look into our houses to enquire into the whereabouts of liquor and to see if we have stored them. There are remedies which sometimes turn out to be more injurious and serious than the disease itself. This is one of those cases where the remedy is perhaps a thousand times more dangerous than the disease itself. For these and other various reasons, I cannot see eye to eye in this matter with the Government, and we propose to offer our opposition to this Bill.

Mr. K. Achyuta Menon.—The main opposition of the House, as I understood, was to the status of the persons in whom such power is vested.

Mr. C. A. Ouseph.—No.

Mr. K. Achyuta Menon.—I understand it is so, and I reply to it as I understand. Of course, very serious remarks have been made against the officer in charge of the Department. The mere fact that the subordinate officers should not be given such powers is no sound argument. There may be black sheep in the departments, and these objectionable creatures should be cleared away. If we say that the aminadar should not be given certain powers, it is no argument. The objection is for the retention of such creatures.

Mr. M. Krishna Menon.—But they will be promoted, I say, in the Excise Department, and these persons will continue

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the same practice and the Heads of Departments will also endorse their views.

Mr. K. Achyuta Menon.—To say that the Government or the Head of a Department connives at the subordinate officers is a remark that should not be made in a Council. It is quite out of place. So that it is no objection to the Bill to say that the persons who are to carry out the provisions of the Bill are corrupt. The proper thing would be to remove them. The Police Officers may be corrupt. They have been invested with such powers. Everybody lost sight of that. They have to preserve public peace and the safety of the public. Government only desire to confer powers, just as in the Police Department, on aminadars in the Abkari Department whose status is much better than that of the Head-constables. We are only following the Abkari Regulation in Travancore. We are trying to convince the opposite party.

President.—They are not an opposite party. We are the officials and they are the non-officials, and we both are for promoting the welfare of the people. Government is the executive, and they are the representatives of the people. We join together and discuss, so that we are not here one side in power and the other side in opposition. We should try to convince those who are opposed to us, and they should try to convince the Government that their policy is right. There is nobody opposing it.

Mr. K. Achyuta Menon.—By the words 'opposite party' I meant only those members who took an opposite view. I know there may be members here who may hold their own views, and our attempt is to convince those who hold opposite views. The suggestion seems to be that drinking has come into existence, because there is the Abkari Department. The burden of the song seems to be that, as soon as this Department is abolished, drinking will disappear. So far as I am concerned, I doubt about the correctness of that statement. Drink has been in existence, and it will go on unless the people make up their minds to stop it. I do not think the removal of the Abkari Department will take place. You can make speeches. We can go on theorising.

President.—The policy is minimum consumption and maximum revenue.

Mr. K. Achyuta Menon.—If people are allowed to make illicit liquor, the revenue will decrease.

When a Member speaks, his line of argument is upset by these interruptions. We should show some courtesy and should not allow his speech to be interrupted. If the Member is very

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anxious in hitting back, let him do it when he is on his legs next time, but not now, when I am on my legs. If my statement objecting to certain remarks is hitting, I don't know what hitting is. I say the abolition of the Abkari Department is not abolishing drink. I do not know whom it is I am hitting.

President.—The sum and substance of the speech is that it is for the efficient working of the department that these provisions exist.

Mr. K. Achyuta Menon.—I don't know if, in spite of these, the Abkari Department is going to end in the near future. So that, as long as it exists, anything illicit is objectionable, and powers are mostly granted to persons of some position, and if they misuse those powers, certainly they will be taken to task. Searches are not to be effected by the officers themselves entering into the houses. Some safe-guards are provided in the Code —in the presence of two respectable witnesses. Of course, it may be asked who are the respectable witnesses. If we think that we are the only honourable and respectable gentlemen in the State, then the Bill ought to be objected to. I think somebody—I think it is my friend, the Superintendent of Excise—said that for malicious searches an action may lie. If a person maliciously searches a house, certainly he is liable for an action.

Dr. A. R. Menon.—Who is to decide whether it is malicious or not?

Mr. K. Achyuta Menon.—The party aggrieved has to complain before the court, either civil or criminal, and the court will decide whether the action is malicious or not. The department can also take action against him. The search has to be conducted in the presence of two respectable witnesses. I do not say that any amount of safeguard provided in the law will be sufficient. If these provisions are transgressed, the aggrieved party has a remedy, either departmentally or through court. Under these circumstances, I think, although two views are possible regarding this Bill, to characterise this Bill as perverse is—I may use the word in return—to call the criticism most perverse.

President.—I think we can go on.

The question of reading in Council 'A Bill to amend the Cochin Abkari Regulation I of 1077' was put to the vote and lost.

Dr. A. G. Menon.—I want a poll, Sir, just to show that the Government Members are alone on the other side.

President.—Mr. Karuppan is a Government servant and not a Government Member.

Mr. A. B. Salem.—I do not know whether that ruling is correct. You have ruled here that he can vote independently.

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He has voted. He is a Government servant, and there is no escape from that.

President.—Please take down that all the official Members as well as Mr. Karuppan voted for and the others voted against.

Dr. A. G. Menon.—We accept your suggestion. The neutrals who have not voted will be on our side. So we have no objection.

President.—For—all the 12 Government Members and Mr. Karuppan. Against—all the Members of the Progressive Party. How many are against?

Dr. A. G. Menon.—Mr. Konnanath Raman Menon has joined our party, and he has taken seat with us.

President.—Please take down all the names on this side.

1. Mr. I. E. Ambooken.
2. ,, C. Barton Wright.
3. Mr. George Chakyamuri.
4. Dr. A. G. Menon
5. Mr. C. N. Ittiravi Nambudiri
6. ,, E. Ikkanda Wariar.
7. ,, V. K. Kochunni Menon.
8. ,, M. Krishna Menon.
9. ,, C. A. Kunjunni Raja.
10. ,, S. S. Koder.
11. Sreemati T. Madhavi Amma.
12. Mr. K. T. Mathew.
13. Mr. C. A. Ouseph.
14. ,, N. Padmanabha Menon
15. ,, M. K. Raman.
16. ,, K. Raman Menon.
17. ,, T. A. Ramachandra Ayyar
18. Dr. A. R. Menon
19. Mr. K. S. Rama Ayyar.
20. ,, A. B. Salem.
21. ,, A Sankara Puduval.
22. ,, K. Sankaran Nambudiri.

Neutral—Mr. O. R. Chummar.

Dr. A. G. Menon.—We lost one vote by not following the President's suggestion.

President.—There is an overwhelming majority on the non-official side; only 13, including Mr. Karuppan, are on the official side.

Dr. A. G. Menon.—13 is always a bad number.

President.—There is no use of the President coming to vote. The President may be left to himself when the votes are unequal.

Dr. A. G. Menon.—You should vote.

President.—What for? It won't serve any purpose. I am not going to vote for a useless purpose.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—This unlucky 13 may be avoided. 13 is very unlucky.

President.—I think that Mr. Karuppan can be reserved. Mr. Karuppan can vote this side.

Dr. A. G. Menon.—I suppose that Mr. Karuppan will take that advice, and whenever there is necessity, he will vote with us.

President.—He must be bound by his conscience.

Dr. A. G. Menon.—His conscience is otherwise.

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